

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
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| CHRISTIAN VOICE OF CENTRAL OHIO INC. |) | File No. EB-03-IH-0501 |
| |) | NAL/Acct. No. 200532080016 |
| |) | Facility ID No. 11126 |
| Licensee of Formerly Noncommercial Educational Station WCVZ(FM), South Zanesville, Ohio |) | FRN # 0002990828 |

FORFEITURE ORDER

Adopted: May 9, 2008

Released: May 9, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this *Forfeiture Order*, we impose a forfeiture of \$9,000 on Christian Voice of Central Ohio, Inc. (“Christian Voice”), licensee of formerly noncommercial educational television Station WCVZ(FM), South Zanesville, Ohio, for its willful and repeated broadcast of advertisements over the station, in violation of Section 399B of the Communications Act of 1934, as amended (the “Act”),¹ and Section 73.503(d) of the Commission's rules.² We take this action pursuant to 47 U.S.C. § 503(b)(1)(D) and 47 C.F.R. § 1.80(f)(4).

II. BACKGROUND

2. This case arises from a complaint filed with the Commission in September 2003, alleging that then-noncommercial educational Station WCVZ(FM) broadcast prohibited underwriting announcements during the month of August 2003.³ In April 2004, after the complaint had been filed, but before the Enforcement Bureau (the “Bureau”) had inquired into this matter, Christian Voice sought to modify its station’s noncommercial educational license so that it could operate Station WCVZ(FM) as a commercial facility.⁴ By letter dated June 17, 2004, the Bureau inquired of the licensee concerning the allegations contained in the complaint.⁵ The licensee responded to the Bureau’s letter of inquiry on July 19, 2004.⁶ Because the licensee’s response failed to answer the specific questions posed, among other

¹ See 47 U.S.C. § 399b.

² See 47 C.F.R. § 73.503(d).

³ See Letter from confidential complainant to Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, dated September 11, 2003 (“*Complaint*”).

⁴ See File No. BMLH-20040415AEI, granted July 19, 2004 (“*WCVZ Commercial Application*”).

⁵ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Christian Voice of Central Ohio, Inc., dated June 17, 2004 (“*LOP*”).

⁶ See Letter from David J. Kaufman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated July 19, 2004 (“*July 19th Response*”).

things, the Bureau thereafter contacted the licensee's counsel and directed that Christian Voice file a further response providing such information, as required by the *LOI*. Christian Voice further responded to the *LOI* on September 8, 2004.⁷

3. By *Notice of Apparent Liability for Forfeiture*, issued December 7, 2004,⁸ the Chief, Enforcement Bureau, found that the licensee had apparently violated the pertinent statute and Commission rules, and proposed a monetary forfeiture of \$20,000.⁹ On January 3, 2005, Christian Voice responded to the *NAL*, maintaining that the Bureau's ruling is erroneous, and that the proposed forfeiture should be either cancelled or reduced.¹⁰

III. DISCUSSION

4. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities.¹¹ As noted above, stations such as then-noncommercial educational Station WCVZ(FM) may not air advertisements. Although contributors to such stations may receive on-air acknowledgements, the Commission has held that such acknowledgements may be made for identification purposes only, and should not promote the contributors' products, services, or businesses.

5. *Commission Standards*. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease.¹² Nevertheless, the Commission has acknowledged that it is at times difficult to distinguish between language that promotes versus that which merely identifies the underwriter. Consequently, it expects that licensees exercise reasonable, good-faith judgment in this area, and affords some latitude to the judgments of licensees who do so.¹³

6. *The Announcements*. Christian Voice maintains that the Bureau erred in finding that three of the ten announcements¹⁴ cited in the *NAL*, *viz.*, those made on behalf of Taste Freeze, The School House, and Prindle-GMAC Real Estate, violate the Commission's underwriting rules by promoting their respective sponsors.¹⁵ Christian Voice argues that those announcements are specifically acceptable because they do not contain price information, qualitative comparisons, or calls to action, and are "at least as compliant with the rule [as those] found by the Commission to be compliant in *Xavier*."¹⁶

⁷ See Letter from David J. Kaufman, Esq., to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, dated September 8, 2004 ("*September 8th Response*").

⁸ See *Christian Voice of Central Ohio, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23663 (Enf. Bur. 2004) ("*NAL*").

⁹ See *id.*

¹⁰ See *Response to Notice of Apparent Liability*, filed January 3, 2005 ("*January 3rd Response*").

¹¹ See 47 U.S.C. § 399b(a).

¹² See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice (1986), *republished*, 7 FCC Rcd 827 (1992) ("*Public Notice*").

¹³ See *Xavier University*, Letter of Admonition, issued November 14, 1989 (Mass Med. Bur.), *recons. granted*, Memorandum Opinion and Order, 5 FCC Rcd 4920 (1990).

¹⁴ Only ten announcements are at issue. We note that the *NAL* miscounted them as eleven.

¹⁵ See *September 8th Response* at 9-10. Although Christian Voice generally contends that the other announcements "arguably comply" with the Commission's underwriting rule, it does not specify how. See *id.*

¹⁶ See *January 3rd Response* at 9, *citing Xavier*.

On further consideration, we agree that the announcement made on behalf of The School House, which identifies the underwriter's available stock of "creative learning materials," was made consistent with the licensee's discretion under *Xavier*.¹⁷ As to the arguments Christian Voice has made concerning the other two announcements it cites, however, we disagree, for the reasons set forth below.

7. The announcement made on behalf of Tastee Freeze characterizes the underwriter's ice cream products in prohibited qualitative terms, by noting that they are "tastefully decorated," and by attempting to induce patronage by asking listeners whether they are "planning a special occasion" which might require use of the underwriter's products. The Prindle GMAC Real Estate announcement also impermissibly advert to favorable qualities possessed by the underwriter that seek to distinguish its business from similar enterprises, and thus seeks to induce patronage by stating that "we're all about family," and that "we love selling real estate."¹⁸ In this case, the announcements in question characterize their respective underwriters' products or services in qualitative terms or otherwise attempt to induce business patronage, which references are specifically forbidden.¹⁹ Such statements, in the context of this case, are inconsistent with the identification-only purpose of underwriting acknowledgments,²⁰ and are not value neutral. In the instant case, the references concerning the underwriter's real estate agency imply that the agency possesses special business affinity or experience that attempts to favorably distinguish it from others.²¹ That the cited underwriting announcements do not also contain price information does not render them acceptable, and is not a mitigating factor.

8. We further find no merit to Christian Voice's claim that the forfeiture proposed is inconsistent with recent similar precedent.²² The forfeiture amount proposed in the instant *NAL* reflects the substantial number of announcements involved, *i.e.*, nine, and the lengthy period of time during which the violations occurred, *i.e.*, 15 months. Those factors, taken as a whole, compound the seriousness of this case and distinguish it from others.²³ In addition, Christian Voice's contention that "no civil penalty

¹⁷ See, *e.g.*, *Xavier*, *supra*, note 13, where the Commission found the reference to the underwriter's "creative services for advertising, marketing and training," to be non-promotional because employing creative material is the stock-in-trade of all advertising agencies.

¹⁸ *Minority TV NAL*, 17 FCC Rcd 15646, 15652 (where airline underwriter was depicted as "harmoniously-run carrier" through portrayal of its content workers, message found to impermissibly encourage business patronage).

¹⁹ See *Public Notice supra*.

²⁰ See *id.*

²¹ Cf. *Xavier*, *supra*, note 13.

²² *January 3rd Response* at 6-8.

²³ See *Family Life Educational Foundation (KOUZ(FM))*, Notice of Apparent Liability, 17 FCC Rcd 16137 (Enf. Bur. 2002) (forfeiture paid) (\$2,000 forfeiture imposed for repeated violation involving 120 repetitions of one message over a three-month period); *Southern Rhode Island Broadcasting, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 8115 (Enf. Bur. 2000) (forfeiture paid) (\$1,000 forfeiture imposed for unspecified number of repetitions of five prohibited messages over two-day period); *Window to the World Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 10025 (Enf. Bur. 2000) (forfeiture reduced) (\$2,000 forfeiture imposed for unspecified number of repetitions of single prohibited message over an unspecified period); *Minority TV FO*, 18 FCC Rcd 26611, 26614, ¶ 11 (Enf. Bur. 2003) (\$10,000 forfeiture imposed for 1,911 repetitions of seventeen prohibited announcements over two-year period). Although *Minority TV FO* presents many facts analogous to those of the instant case, it was decided several years ago, and proposed a forfeiture amount that we believe is insufficient when compared to recent similar precedent. Furthermore, citing *Fort Wayne Public Television, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 20869 (Enf. Bur. 2004) (forfeiture paid), Christian Voice also attempts to rely on a case that was settled through consent decree. That reliance is misplaced. The voluntary contribution amount set in a consent decree case is affected by many additional factors not present in a straight-forward forfeiture proceeding, including other negotiated terms and the avoidance of further enforcement efforts by the Commission. Accordingly,

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is appropriate for a [noncommercial educational] station operating on a non-reserved channel,” as here, is baseless.²⁴ The Commission has specifically rejected this contention.²⁵ Moreover, the case on which Christian Voice attempts to rely for this proposition is inapposite.²⁶ In *High I-Q*, the Commission found that, in the context of a license renewal proceeding, the licensee’s premature commencement of commercial operations on its noncommercial educational station, in conjunction with other alleged rule violations, did not amount to disqualifying misconduct. Noting that the licensee’s broadcast of advertisements prior to its receiving authorization to modify such facilities from noncommercial to commercial operation would otherwise have subjected it to a monetary forfeiture, the Commission declined to pursue such a penalty for underwriting rule violations occurring several years prior because the statute of limitations for doing so had already expired.²⁷ The Commission is not similarly constrained in this case, and Christian Voice has not demonstrated otherwise. For the reasons set forth in the *NAL*, we conclude that Christian Voice ignored settled precedent and failed to properly exercise its good faith discretion in broadcasting the underwriting announcements in question.²⁸

9. Nor do we find mitigating Christian Voice’s claim that several local charities, who allegedly rely on support from the station, will suffer financially if the licensee is required to pay the instant forfeiture amount.²⁹ That claim, even if true, is irrelevant to the matters at issue in this case. Moreover, we note that Christian Voice has neither provided financial evidence suggesting that it is unable to pay the forfeiture, nor argued that such payment would create an undue hardship threatening its station’s continued operation.³⁰ However, in recognition of the fact that Christian Voice has maintained heretofore a good overall compliance record, we will reduce the forfeiture accordingly.

10. *Forfeiture Calculation.* Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a monetary forfeiture penalty.³¹ In order to impose such a forfeiture penalty, the Commission must issue a

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Fort Wayne, in which the Commission agreed to a minimal voluntary contribution amount of \$1,000 because the licensee had voluntarily proposed acceptable settlement terms, is inapposite.

²⁴ *January 3rd Response* at 1-4.

²⁵ See *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, First Report and Notice of Proposed Rulemaking, 69 FCC 2d 200, 230, ¶ 61 (1978) (the Commission held that noncommercial educational stations operating on the non-reserved channels are also required to follow the underwriting rules pertaining to similar stations operating on the reserved bands).

²⁶ See *High I-Q Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 7225 (2004).

²⁷ See *id.* at 7235, ¶ 38; 7240, ¶ 51.

²⁸ See *Xavier, supra*, note 13 (the Commission defers to the reasonable good faith judgments exercised by licensees and finds violations where material is clearly promotional as opposed to merely identifying).

²⁹ See *January 3rd Response* at 4-6.

³⁰ See *id.* at 4-5.

³¹ See 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s

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notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³² The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.³³ In this case, the *NAL* found that Christian Voice engaged in a conscious and deliberate decision to broadcast the announcements at issue, a finding which the licensee does not dispute. Accordingly, we find that the announcements aired in violation of 47 U.S.C. § 399b and 47 C.F.R. § 73.503(d) were willful.

11. The Commission's *Forfeiture Policy Statement* establishes a base forfeiture amount of \$2,000 for the broadcast of programming in violation of enhanced underwriting requirements.³⁴ It also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in Section 503(b)(2)(E), such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³⁵ The statutory maximum forfeiture amount for the violation in this case is \$27,500.³⁶ In this case, the *NAL* appropriately considered the circumstances of this case, in particular the significant period of time during which a significant number of prohibited announcements -- nine-- were aired, and the substantial number of repetitions involved, in concluding that an upward adjustment of the forfeiture amount from the base amount of \$2,000 is warranted. However, in recognition of the fact that Christian Voice has maintained heretofore a good overall prior compliance record, and because partial reduction is appropriate for excluding the announcement permissibly made on behalf of The School House, we will reduce the forfeiture amount proposed in the *NAL* from \$20,000 to \$9,000.³⁷

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,³⁸ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,³⁹ that Christian Voice of Central Ohio, Inc., licensee of then-noncommercial educational Station WCVZ(FM), South

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repeated signal leakage). "Repeated" merely means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

³² 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³³ See, e.g., *SBC Communications, Inc.*, Notice of Apparent Liability, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

³⁴ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement"); 47 C.F.R. § 1.80(b).

³⁵ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-101, ¶ 27.

³⁶ Effective September 7, 2004, the Commission amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. See *Amendment of Section 1.80 of the Commission's Rules*, Order, 19 FCC Rcd 10945, 10946, ¶ 6 (2004). Under the revised rules, for violations occurring after the effective date, the Commission may propose forfeitures against broadcast licensees of up to \$32,500 per violation. This broadcast occurred before that effective date, so the statutory maximum applicable here is \$27,500.

³⁷ See 47 C.F.R. § 1.80(b)(4); see, e.g., *Pittman Broadcasting Services, LLC*, Forfeiture Order, 19 FCC Rcd 15320, 15322 (Enf. Bur. 2004) (where reduction based on prior record of compliance was found warranted).

³⁸ See 47 U.S.C. § 503(b).

³⁹ See 47 C.F.R. §§ 0.111, 0.311, and 1.80.

Zanesville, Ohio, **FORFEIT** to the United States the sum of Nine Thousand Dollars (\$9,000) for willfully and repeatedly broadcasting advertisements in violation of Section 399B of the Act, 47 U.S.C. § 399b, and Section 73.503(d) of the Commission's rules, 47 C.F.R. § 73.503(d).

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Christian Voice will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov and to Kenneth.Scheibel@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁰ Christian Voice may contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

14. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent, by Certified Mail, Return Receipt Requested, to Christian Voice of Central Ohio, Inc., P.O. Box 783, New Albany, Ohio 43054, and to its counsel, David J. Kaufman, Esq., Brown, Nietert & Kaufman, Chartered, Suite 817, 2000 L Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

⁴⁰ See 47 C.F.R. § 1.1914.